PT 04-4
Tax Type: Property Tax
Issue: Government Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

CITY OF EAST DUBUQUE, APPLICANT	**Nos:**	**02-PT-0055 (02-43-0001) (02-43-0004) (02-43-0005)**
v.		
DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS	**P.I.N.S:**	**43-05-504-340-00 43-05-506-530-00 43-05-506-510-09**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Terry Kurt of Nack, Richardson, & Kurt on behalf of the City of East Dubuque (the "Applicant" or the "City"); Mr. Michael Abramovic, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue (the "Department").

SYNOPSIS: This matter raises the issue of whether real estate identified by Jo Daviess County Parcel Numbers 43-05-504-340-00, 43-05-506-530-00 and 43-05-506-510-09 (collectively referred to as the "subject properties") qualifies for exemption from 2002 real estate under 35 **ILCS** 200/15-60. The underlying controversy arises as follows:

Applicant filed three separate Applications for Property Tax Exemption (one for each of the subject properties) with the Jo Daviess County Board of Review, which reviewed the Applications and recommended to the Department that: (a) Parcel Index Number 43-05-504-340-00 be exempt from "March, 2002 To Dec. 2002[;]" (b) Parcel

Index Number 43-05-506-530-00 be exempt from "Feb. 26, 2002 To Dec. 31, 2002[;]" and, (c) Parcel Index Number 43-05-506-510-09 be exempt from "March, 2002 To Dec. 2002[.]" Dept. Group Ex. No. 1. The Department, however, denied all of the requested exemptions *in toto* under terms of three separate determinations, dated August 1, 2002, which found that all three of the subject properties were not in exempt ownership.

Applicant filed timely appeals to all three determinations and later presented evidence at a formal evidentiary hearing. Following a careful review of the record made at hearing, I recommend that all three of the Department's initial determinations be affirmed.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position herein are established by the admission of Dept. Group Ex. No. 1.
2. The Department's position in this matter is that all three of the subject properties are not in exempt ownership. *Id*.
3. All three of the subject properties are located in East Dubuque Illinois. *Id*.
4. Applicant did not hold legal title to any of the subject properties throughout 2002. Tr. P. 11.
5. The legal titleholder to all of these properties throughout 2002 was the Illinois Department of Natural Resources (the "IDNR"). Applicant Ex. No. 1.
6. IDNR held title to these properties as part of one of its flood mitigation grant programs whereby it provides municipalities with funds for the purchase of floodplain properties. IDNR then transfers title to these properties to the participating

municipalities once any existing structures or other impediments to floodplain use have been removed. Applicant Ex. No. 1; Tr. p. 12.

7. Applicant's participation in this program was formalized in a written grant agreement between itself and IDNR. However, applicant did not submit this grant agreement into evidence. Tr. p. 12.

8. IDNR did not transfer legal title to any of the subject properties to applicant at any point during 2002. It did, nevertheless, grant applicant power of attorney to sign any documents that would be necessary to effectuate this transfer on September 11, 2002. Tr. p. 11.

9. The City maintained access to all three of the subject properties and performed regular maintenance on them, including securing the sites, mowing the lawns, performing any necessary inspections, throughout 2002. Tr. p. 15.

CONCLUSIONS OF LAW:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

> The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted Section 15-60 of the Property Tax Code, 35 **ILCS** 200/1-1 *et seq*., which provides, in relevant part, for exemption of the following:

200/15-60. Taxing District Property

> § 15-50. Taxing district property. All property belonging to any county, village or city, used exclusively for maintenance of the poor is exempt [from real estate

> taxation], as is all property owned by a taxing district[1] that is being held for future expansion or development, except if leased by the taxing district to lessees for use for other than public purposes.
>
> Also exempt are:
>
> (a) all swamp or overflowed lands belonging to any county;
>
> (b) all public buildings belonging to any county, township, city or incorporated town, with the ground on which the buildings are erected;
>
> (c) all property owned by any city or village located within its incorporated limits;
>
> (d) All property owned by any city or village located outside its corporate limits but within the same county when used as a tuberculosis sanitarium, farm colony in connection with a house of correction, or nursery, garden, or farm, for the growing of shrubs, trees, flowers, vegetables, and plants for use in beautifying, maintaining, and operating playgrounds, parks, parkways, public grounds, buildings, and institutions owned or controlled by the city or village; and,
>
> (e) all property owned by a township and operated as senior citizen housing under Sections 35-50 through 35-50.6 of the Township Code [60 **ILCS** 1/35-50 to 1/35-50.6].

35 **ILCS** 15-60.

Like all provisions exempting real estate from taxation, Section 15-60 and all of its subsections must be strictly construed against exemption, with all unproven facts and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill.

---

[1]. Section 1-150 of the Code defines the term "taxing district" as "any unit of local government, school district or community college district with power to levy taxes." 35 **ILCS** 200/1-150. [Emphasis added].

App.3d 430 (1st Dist. 1987). Therefore, applicant bears the burden of proving, by a standard of clear and convincing evidence, that the property (or, in this case, properties), that it is seeking to exempt falls within the provisions under which the exemption is sought. *Id*.

I take administrative notice that the applicant is a duly incorporated city whose operations are subject to and governed by the Illinois Municipal Code, 65 **ILCS** 5/1-1-1, *et seq*.[2] Section 5/8-3-1 of the Illinois Municipal Code, 65 **ILCS** 5/8-3-1, provides the applicant with the powers to levy and collect taxes that are necessary to qualify it as the type of "taxing district" whose property is subject to exemption under Section 15-60 of the Property Tax Code. However, the words "belonging to" and "owned by," which appear interchangeably throughout Section 15-60 and all of its pertinent subsections, demonstrate that applicant's mere status as a "taxing district" is legally insufficient to sustain exemption under that provision unless the applicant first proves that it qualifies as the "owner" of the properties in question.

Applicant admits that it was not the titled owner of the subject properties throughout 2002. However, "[r]evenue collection … is concerned not with the refinements of title but with the realities of ownership." Southern Illinois University

---

[2]. Section 5/1-1-2(1) of the Illinois Municipal Code states, in relevant part, that:

> § 1-1-2. Definitions. In this Code:
>
> > "Municipal" or "municipality" means a city, village, or incorporated town in the State of Illinois, but unless the context otherwise provides, "municipal" or "municipality" does not include a township, town when used as the equivalent of a township, incorporated town that has superseded a civil township, county, school district, park district, sanitary district, or other similar governmental district.

65 **ILCS** 5/1-1-2.

Foundation v. Booker, 98 Ill. App.3d 1062, 1069 (5th District, 1981); People v. Chicago Title and Trust, 75 Ill.2d 479 (1979); Chicago Patrolmen's Association v. Department of Revenue, 171 Ill.2d 263 (1996). As such, the "owner" of real estate for property tax purposes is not necessarily synonymous with the person or entity that holds legal title to the property. Booker, *supra*; People v. Chicago Title and Trust, *supra*. Rather, the "owner" is the person or entity that in practical terms: (1) exercises rights of control over the property; and, (2) derives benefits therefrom. *Id*.

In this case, applicant obtained whatever interest it holds in the subject properties pursuant to a land grant agreement with the IDNR. That agreement was memorialized in a written contract between the parties. Therefore, the terms and conditions set forth in that contract will necessarily determine whether applicant, itself, or the IDNR, which is neither the applicant herein nor a party to this proceeding, qualifies as the "owner" of the subject properties for present purposes.

Applicant did not submit the actual grant contract into evidence. Therefore, the mere testimony of its sole witness and City manager, Michael Michel, that described the general nature and underlying purpose of the grant contract[3] fails to rise to the level of clear and convincing evidence that is necessary to sustain applicant's burden of proof. For this reason, the parts of Mr. Michel's testimony indicating that applicant performed routine maintenance and upkeep on the subject properties throughout 2002[4] are likewise legally insufficient to sustain that burden. To conclude otherwise would effectively relax the evidentiary standards in property tax cases to levels well below those necessary to

[3]. See, *e.g.* Tr. pp. 11-12.

[4]. See, *e.g.* Tr. p. 14, 15.

effectuate the state constitutional mandates which establish the very limited class of properties that the General Assembly is constitutionally permitted to exempt

In this context, that class is limited to those properties whose incidents of ownership are vested in "units of local government." Illinois Const., 1970, Art. IX, §6. Thus, while applicant, itself, qualifies as one of these "units of local government," it has failed to prove, by the requisite clear and convincing evidence, that it holds the incidents of ownership necessary to qualify it as the "owner" of the three properties that it is presently seeking to exempt.

The one piece of documentary evidence applicant did submit into evidence, a letter from the Manager of IDNR's Flood Hazard Mitigation Program (Applicant Ex. No. 1), does not alter any of the above conclusions. This letter states no more than: (a) Mr. Michel acts as "the point of contact" for applicant's land contract with IDNR; (b) the underlying purpose of this contract is, in very general terms, "for a flood mitigation project where the [applicant] purchases floodplain properties in the Shore Acres area within East Dubuque using IDNR funding[;]" and, (c) Mr. Michel "acts as an agent for IDNR and can sign documents on IDNR's behalf." Applicant Ex. No. 1.

The mere fact that IDNR authorized Mr. Michael to sign any documents necessary to effectuate any appropriate change of ownership does not prove that Mr. Michel in fact exercised that authority to actually effectuate such a change of ownership, during the 2002 tax year. Indeed, Mr. Michel specifically testified that there had been no change of ownership as of the hearing date, July 17, 2003, because none of the subject properties were suitable for floodplain use. Tr. pp. 11-14. However, even if this were not the case, the letter fails to provide any details whatsoever as to the terms and

conditions of the specific grant contract that governs the particular flood mitigation project that these subject properties are included within. Nor does it state anything about whether or to what extent either the applicant or IDNR is to exercise direction and control over the subject properties until title actually passes to the City. Absent this information, the evidence applicant submitted into the record simply does not rise to the level of clear and convincing evidence that is required to sustain its burden of proof.

Because the applicant has failed to sustain its burden of proof on the threshold issue of ownership, it is of no legal significance that all of the subject properties satisfy the collateral requirement, set forth in 35 **ILCS** 200/15-60(c), of being located within the applicant's "incorporated limits." For the same reason, it is likewise insignificant that, in accordance with the first paragraph of Section 15-60, applicant may have been holding these properties for "future development" with respect to floodplain usage during 2002. Therefore, the Department's initial determination in this matter should be affirmed.

WHEREFORE, for the reasons set forth above, I recommend that real estate identified by Jo Daviess County Parcel Numbers 43-05-504-340-00, 43-05-506-530-00 and 43-05-506-510-09 not be exempt from 2002 real estate taxes.

Date: 1/23/2004

Alan I. Marcus
Administrative Law Judge